

Message Text

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TAGS: MARR NATO

SUBJ: DPC AGENDA 4 NOVEMBER 1975, ITEM II: DISPUTE BETWEEN NATO
AGENCY AND COUNTRY OF ORIGIN OF FIRM BIDDING ON NATO
INFRASTRUCTURE CONTRACT (NICSMA/NETHERLANDS ON NICS TARE)

REF: A. PO/75/120, 24 OCT 75

B. AC/4(PP)DS/1044, ITEM I.2(C), 9 OCT 75 MEETING

C. AC/4(PP)DS/1043, ITEM I.2(A), 2 OCT 75 MEETING

D. AC/4-D/2261 (FINAL), 30 SEPT 74

SUMMARY: THIS MESSAGE PROVIDES BACKGROUND ON DUTCH DISPUTE
OF NICSMA'S FINDING THAT DUTCH FIRM'S (PHILIPS) BID IS
NON-COMPLIANT WITH NICS TARE SPECIFICATIONS, AND INFRASTRUCTURE
PAYMENTS AND PROGRESS (P&P) COMMITTEE'S UNANIMOUS (LESS
NETHERLANDS) CONCLUSION THAT NICSMA'S FINDING IS CORRECT. IT
ALSO NOTES DUTCH PERSISTENCE IN PURSUING DETAILED INTERNATIONAL
COMPETITIVE BIDDING (ICB) PROCEDURES, RAISING POSSIBLE PROBLEM
OF PRICE ESCALATION AS PRICE VALIDITY TIME RUNS OUT, AND NEED
TO PROTECT COMPLIANT US BIDDER (LITTON). ACTION REQUESTED:
CONCURRENCE IN PROPOSED US POSITION NOTED IN PARAGRAPH 4
BELOW. END SUMMARY.

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1. FOLLOWING THREE WEEKS' INFORMAL NICSMA/DUTCH
DISCUSSIONS AFTER DUTCH APPEAL OF NICSMA FINDING PHILIPS'
BID NON-COMPLIANT, DUTCH INVOKED ICB DISPUTE PROCEDURES (REF D,
ANNEX I). DURING SEVERAL P&P MEETING PRESENTATIONS OF ARGUMENTS

BY BOTH SIDES, P&P COMMITTEE CONCLUDED UNANIMOUSLY (EXCEPT NETHERLANDS) THAT NICSMA'S FINDING OF PHILIPS' BID NON-COMPLIANT WAS VALID (SEE REFS B AND C).

2. AT 9 OCT 75 P&P COMMITTEE MEETING, PARTIES TO DISPUTE COULD NOT AGREE TO ESTABLISHMENT OF A P&P LEVEL BINDING PANEL OF INVESTIGATION (A COURSE PERMITTED BY PARA 17, ANNEX I OF REF D), SO COMMITTEE AGREED TO ALTERNATIVE PROCEDURE OF SENDING MATTER TO SECRETARY GENERAL FOR DPC DECISION (SEE PARAS 20-24, ANNEX I, REF D).

3. WE EXPECT ALL COUNTRIES EXCEPT NETHERLANDS TO CONFIRM THE P&P COMMITTEE CONCLUSION THAT NICSMA'S FINDING PHILIPS BID NON-COMPLIANT WAS CORRECT. IF NETHERLANDS SHOULD PERSIST IN DISPUTE, ALL SHOULD BE PREPARED TO AGREE TO A BINDING PANEL OR BOARD OF ARBITRATION. ALL BUT NETHERLANDS ARE EXPECTED TO URGE PROMPT RESOLUTION, BUT IF THE DECISION IS TO RESORT TO ARBITRATION, NO SOLUTION CAN BE EXPECTED FOR 6 TO 8 WEEKS. PRICE BIDS NOW VALID UNTIL 21 NOV 75 WILL CERTAINLY ESCALATE, AND SOME PROTECTION SHOULD BE PROVIDED TO COMPLIANT BIDDER WHO HAS HAD NO PART IN THE DELAY.

4. SINCE A US CONTRACTOR (LITTON) WOULD BE THE BENEFICIARY OF A POSITIVE DPC ACTION, WHICH WE ARE URGING UPON THE DUTCH PERM REP, WE PROPOSE TO ALLOW OTHERS TO TAKE LEAD, BUT THEN TO:

A. SEEK TO COMBINE WITH OTHER DELEGATIONS IN BRINGING NETHERLANDS TO WITHDRAW ITS OBJECTION AND RESOLVING THE DISPUTE BY A UNANIMOUS DPC DECISION;

B. FAILING THAT, URGE QUICK RESOLUTION OF THE DISPUTE IF POSSIBLE WITHOUT RESORT TO FORMAL ARBITRATION, NOTING THAT THE NORMAL BOARD OF ARBITRATION PROCEDURE TIME WILL MAKE RESOLUTION IMPOSSIBLE BEFORE THE CURRENT BID PRICE VALIDITY EXPIRES 21 NOV 75; AND

C. IF FORMAL ARBITRATION IS NECESSARY, OBTAIN FORMAL DPC RECOGNITION OF THE NEED TO PROTECT THE COMPLIANT US BIDDER'S INTERESTS IN CASE HE IS FORCED INTO PRICE ESCALATION DUE TO THE DELAY CAUSED BY NATO PROCEDURES. BRUCE
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